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Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1000

Case No. 1100: LANGER

Against: The Secretary-General of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Julio Barboza, Vice-President, presiding; Ms. Marsha A. Echols; Mr. Omer Yousif Bireedo;

Whereas, on 17 September 1999, Gerd Detlef Langer, a former staff member of the United Nations, filed an Application requesting the Tribunal to:

"1. Re-examine the Joint Appeal Board's conclusions and recommendations ... in the light of its own jurisprudence and the arguments offered herein;

2. Overrule the decision of the Secretary-General dated 18 June 1999 not to take further action on [his] appeal;

3. Find that [the Applicant] had a legally founded expectancy of continued service with the International Trade Centre ... until [he] reached normal retirement age;

4. Find that this expectancy created a reciproc al obligation on the part of the Respondent which was not fulfilled;

5. Order payment to [the Applicant] of full salary and allowances through 31 March 1999; or alternatively

6. Order payment to [the Applicant] of 12 months of pensionable remuneration based on nearly 18 years of service according to the schedule contained in Annex III of the Staff rules;

7. Order payment to [the Applicant] of a just and reasonable compensation for the loss of expected pension benefits."

Whereas the Respondent filed his Answer on 12 October 2000;

Whereas the Applicant filed Written Observations on 28 December 2000;

Whereas the facts in the case are as follows:

The Applicant entered the service of the International Trade Center (ITC), an organ of both the United Nations Conference on Trade and Development and the World Trade Organization, on 1 July 1979, as a Senior Trade Promotion Adviser at the L-5 level on a one-year Project Personnel Appointment (PPA) under the 200 Series of the Staff Regulations and Rules. The Applicant was employed on a series of PPAs until his separation from service on 30 April 1997, at the expiration of his final appointment.

On 11 April 1997, the Chief, Personnel Section, Division of Administration, ITC, wrote to the Applicant advising him of the procedural formalities relating to his separation from service. This was not the first such letter the Applicant had received during his employment with ITC: on 1 August 1994, he received similar information relating to his expected separation from service on 15 August 1994, but the letter was subsequently revoked. In 1997, however, there was no such revocation and, on 16 May 1997, the Chief, Personnel Section, Division of Administration, ITC, signed a "Final Clearance Certificate for Project Personnel" for the Applicant. The Certificate indicated that the Applicant's separation was due to "Expiration of Appointment" and that he was not entitled to a termination indemnity. Similarly, no termination indemnity was reflected in the Applicant's "Final Pay Statement" of 27 May 1997.

On 5 July 1997, the Applicant wrote to the Secretary-General asking for a review of the decision "not to grant [him] a termination indemnity on the basis of staff rule 109.4, following the termination of [his] contract with ITC as a Senior Advisor after nearly 18 years of service".

On 17 October 1997, the Applicant lodged an appeal with the Geneva Joint Appeals Board (JAB), contesting the management decisions as to termination notice, termination indemnity and the non-renewal of his appointment.

The JAB adopted its report on 19 May 1999. Its considerations, conclusions and recommendations read as follows:

"**Considerations**:

...

54. ... [T]he Panel examined the Appellant's claim that he should be "assimilated" to a 100 Series staff member – in view of his years of service and the functions he encumbered – and that the 100 Series Staff Rules should apply to him by analogy. The Panel noted that '[UNAT], in accordance with the consistent case law on this matter, does not subscribe to such assimilation, which would contradict the terms of contracts freely accepted by the [Appellant]'. [See Judgement No. 647, *Pereyra* (1994).]

55. Furthermore, the Panel did not agree with the Appellant's assertion that because of his functions at ITC (...), his contractual situation was different to that of field staff recruited for implementing a specific project within a programme. ...

56. The Panel was thus of the opinion that the Appellant's appointment was governed by the 200 Series. ...

...

60. With respect to 'assurances' given to him, the Appellant relies on conversations with [senior ITC management] ... The Panel ... considered that they did not constitute a promise of continued employment ...

...

63. ... [T]he Panel did not share the Appellant's view that by withdrawing the 1 August 1994 'separation letter', ITC 'recognized [his] right to a continued employment'. ...

64. The Panel recalled that a series of successive fixed-term appointments ... is not enough to substantiate a claim of a legal expectancy of renewal. ...

...

Conclusions and Recommendations:

66. ... [T]he Panel **concludes** that:

a. The Appellant was entitled neither to a termination indemnity nor to a termination notice; and

b. The Appellant did not have a legal expectancy of renewal of his appointment with ITC.

67. The Panel therefore **recommends** to the Secretary-General that the present appeal **be rejected**."

On 18 June 1999, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

"...

The Secretary-General ... has taken note that the Panel found that your appointment was governed by the 200 Series, and that, pursuant to these provisions, your appointment expired and was not terminated. He has also taken note that the Panel found that there was no moral obligation to renew your contract. He has further noted the Panel's conclusions that you were entitled neither to a termination indemnity nor to a termination notice and that you did not have a legal expectancy of renewal of your appointment with International Trade Centre. He has finally noted the Panel's recommendation that your appeal be rejected. Accordingly, the Secretary-General has decided to take no further action on your appeal

..."

On 17 September 1999, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The JAB erred in concluding that the Applicant was not entitled to a termination notice or termination indemnity.

2. The JAB erred in concluding that the Applicant had no legal expectancy of renewal of his appointment, as the conduct of the Respondent created such expectancy.

3. The circumstances of the Applicant's employment are such that the Respondent ought not to be able to end his service without notice or compensation.

Whereas the Respondent's principal contentions are:

1. A temporary appointment under the 200 Series does not carry any expectancy of renewal.

2. The totality of circumstances at the time of the expiration of the Applicant's appointment did not create any expectancy of renewal.

3. The expiration of a temporary appointment for a fixed term on the date specified in the letter of appointment does not give rise to either a termination notice or a termination indemnity.

The Tribunal, having deliberated from 5 to 23 July 2001, now pronounces the following judgement:

I. The Applicant requests the Tribunal to re-examine the decision that he was entitled neither to "a termination indemnity nor to a termination notice" and that he did not have a legal expectancy of renewal of his appointment with ITC.

II. The Applicant maintains that the conduct of the Respondent, ever since his recruitment, was such that he could "reasonably and legally expect that [his] employment would be continued". Furthermore, he contends that "an organization ... cannot suddenly and after many years – in [his] case nearly 18 years - of service rely on the clause that a contract under the 200 Series comes to a definite end without further notice and without compensation". Consequently, he argues that he had a legal expectancy that his contract would be renewed and that the non-renewal was, in effect, a termination, thus entitling him to a termination indemnity. He relies on the jurisprudence of the Tribunal in Judgements No. 298, *Délano de Stuven* (1982) and No. 319, *Jekhine* (1982) to support this contention.

TheTribunal concurs with the conclusions of the JAB. All of the Applicant's appointments were subject to expiration without prior notice as specified in his letters of appointment and none of his appointments was terminated prior to its expiration date. As the Applicant's appointment was not terminated, he was not entitled to a termination indemnity.

III. The Tribunal notes that, before the JAB, the Applicant maintained that although his appointment was governed by the 200 Series, his contractual situation and conditions of appointment differed from that of field staff recruited for implementing a specific project within a programme, and that therefore he should be assimilated under the 100 Series. In Judgement No. 885, *Handelsman* (1998), paragraph II, the Tribunal referred to staff rule 204.3 regarding project personnel, which stipulates that "[t]emporary appointments shall be for a fixed term and shall expire without notice on the date specified in the respective letters of appointment" and that such appointments "[do] not carry any expectancy of renewal". (*Ibid.*) The Tribunal found that these rules "thus permit the Respondent to separate a staff member appointed under the 200 Series from a post, even without prior notice and without regard to either the quality of the services that the staff member rendered or the staff member's personal attributes". (*Ibid.*) The Tribunal has consistently upheld the application of these rules unless countervailing or exceptional circumstances have been found. As these appointments are entirely dependent on contingencies such as the requests of governments and the availability of funds, the 200 Series system "simply could not function as intended if staff members appointed ... [thereunder] .... had the same guarantees concerning employment and career development as staff members appointed under the 100 Series". (*Ibid.*) The foregoing is clearly incompatible with the Applicant's claim, which is rejected.

IV. Insofar as the Applicant claims he had a legal expectancy of renewal, having received assurances regarding the renewal of his contract from senior ITC management and "chains" of contracts, the Tribunal notes the finding of the JAB that the "assurances" in question did not constitute a promise of continued employment. In this regard, in Judgements No. 205, *El-Naggar* (1975) and No. 422, *Sawhney* (1988), the Tribunal held that a series of renewals of fixed-term contracts did not give rise to an expectancy of renewal. However, the Tribunal held

in *Handelsman* that a legal expectancy could arise from "countervailing circumstances" such as an express promise on the part of the Administration. In this case, according to the Applicant, the Executive Director and Deputy Executive Director of ITC encouraged all Senior Advisers, including the Applicant, to stay and accept even very short-term contracts on the understanding that the management would do their utmost to obtain funding for the posts. Both the management and the Applicant were fully aware of the fact that his contractual situation was very precarious. The Tribunal agrees with the JAB that this encouragement did not amount to an "express promise" sufficient to create a legal expectancy of employment, and recalls Judgement No. 440, *Shankar* (1989) where it affirmed that "a claim to renewal, to be valid, must be based not on mere verbal assertions unsubstantiated by conclusive proof, but on a firm commitment to renewal revealed by the circumstances of the case".

V. The Applicant attempts to rely on *Délano de Stuven* and *Jekhine* to support his contentions. The Tribunal is not persuaded by his arguments. While it is true that in *Délano de Stuven*, the Tribunal maintained that "expectancy for future employment by holders of fixed-term appointments should be decided not entirely by the wording of the Staff Regulations and Rules and of letters of appointment, but by the totality of circumstances existing at the time of staff members' separation from service", the Applicant in that case was not only encouraged to believe that a solution would be found for her continued employment but even received a copy of a letter from the Acting Chief of Personnel, in relation to a loan from the United Nations Federal Credit Union, stating that "her fixed-term appointment ... is expected to be renewable for at least one year".

In *Jekhine*, the Applicant alleged that the non-renewal of his appointment was the result of discrimination. Further, he claimed a legal expectancy of renewal of his appointment because the Respondent wrote a letter to him four days before the expiration of his fixed-term appointment, informing him that he was to be reinstated in the service of the Organization. The Tribunal found that neither the text of the letter, nor any other circumstances, created a legal entitlement to the renewal of his fixed-term appointment, holding "that the Respondent was not bound by any contractual or statutory provision to renew the Applicant's fixed-term contract".

In the instant matter, the Tribunal finds that neither of these Judgements support the Applicant's case and that his second claim must also fail.

VI. In view of the foregoing, the Tribunal rejects the Application in its entirety.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Marsha A. ECHOLS
Member

Omer Yousif BIREEDO
Member

Geneva, 23 July 2001

Maritza STRUYVENBERG
Executive Secretary